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9 Attorneys for Temporary Conservator
of the Person and Temporary Co-Conservator
of the Estate James P. Spears

FILED
LOS ANGELES SUPERIOR COURT

MAR 05 2008

JOHN A. CLARKE, CLERK

Arnold
BY ANDREA MURDOCK, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
11

12 In re the Temporary Conservatorship of the
Person and the Estate of:

13 BRITNEY JEAN SPEARS,

14 Temporary Conservatee.

15 CASE NO. BP 108870

16 **DECLARATION OF JEFFREY D.
WEXLER IN SUPPORT OF *EX PARTE*
APPLICATION**

17 Date: March 5, 2008

18 Time: 1:30 p.m

19 Department: 9

20 Judge: Hon. Reva Goetz, Judge Pro Tem

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DECLARATION OF JEFFREY D. WEXLER

I, Jeffrey D. Wexler, declare:

3 1. I am an attorney licensed to practice law in the State of California and am a
4 partner at the law firm of Luce, Forward, Hamilton & Scripps LLP (“Luce Forward”), counsel of
5 record for James P. Spears (“Mr. Spears”), the father of Britney Jean Spears (“Britney”) and
6 temporary conservator of the person and temporary co-conservator of the estate of Britney Jean
7 Spears. Except as otherwise stated, the statements contained herein are based on my personal
8 knowledge and experience. If called as a witness, I could and would testify competently to those
9 facts.

10 2. On February 14, 2008, attorney Jon Eardley purported to remove the
11 conservatorship proceedings to the United States District Court for the Central District of
12 California (the “Central District”). On February 26, 2008, Judge Philip S. Gutierrez of the
13 Central District granted Mr. Spears’ motion to remand the case to the Probate Court. In his
14 corrected February 26, 2008 Order [Docket 35], a true and correct copy of which is attached
15 hereto as Exhibit A, Judge Gutierrez found that:

16 Here, Mr. Eardley has no authority to remove the case from state court.
17 He is neither a party nor a defendant. While he claims to be Ms. Spears' attorney,
18 the Probate Court appointed Mr. Ingham as her attorney and found that she was
19 incapable of retaining her own counsel. Mr. Eardley did not challenge the
Probate Court's appointment of Mr. Ingham and has not attempted to intervene in
the conservatorship proceeding on her behalf. Instead, Mr. Eardley caused the
case to be removed to federal court while clearly lacking the authority to do so.

20 3. As a member of the bar of the Central District who is registered to receive Notices
21 of Electronic Filing, I receive notices from the Central District whenever a new filing is made in
22 any case in which I am counsel of record.

23 4. Between 11:12 a.m. and 11:22 a.m. on March 5, 2008, I received Notices of
24 Electronic Filing from the Central District indicating that Mr. Eardley had purported to file five
25 documents with the Central District: (1) an Amended Notice of Removal [Docket 36]; (2) an
26 Application to Seal Notice of Removal and Declarations of Declarants B and C [Docket 37]; (3)
27 a Declaration of Jon Eardley [Docket 38]; (4) a Declaration of "C" [Docket 39]; and (5) a

1 Declaration of "B" [Docket 40]. Attached hereto collectively as Exhibit B are true and correct
2 copies of the five e-mails that I received from the Central District concerning these filings.

3 5. Typically, Notices of Electronic Filing include links to the filed documents.
4 When I clicked on the links to each of the e-mails included in Exhibit B, I was directed to a page
5 bearing the legend "This document is currently under seal and is restricted from public viewing."
6 Attached hereto collectively as Exhibit C are true and correct copies of the five documents e-
7 filed by the Central District.

8 6. Although I am counsel of record for Mr. Spears in the Central District and am
9 therefore entitled to receive copies of all documents filed with the Central District in the matter –
10 whether such documents are filed under seal or not – Mr. Eardley never served me with copies of
11 any of the documents referenced in the Notices of Electronic Filing. Nor have I seen any of
12 those documents.

13 7. In his opposition to Mr. Spears' motion to remand filed on February 22, 2008, a
14 true and correct copy of which (as e-filed by Mr. Spears with the Court on February 25, 2008) is
15 attached hereto as Exhibit D, Mr. Eardley stated (at page 3, lines 14-18) that he he intended on
16 Monday, February 25, 2008 to file "an application for leave to amend the notice of removal to
17 include federal claims involving witness intimidation, victim intimidation, and other federal
18 claims appropriate for this court's review."

19 8. In my experience, the Central District's clerk's office may take a week or more to
20 process manually filed documents. In light of this fact and Mr. Eardley's statement that he
21 intended to file an amended notice of removal on February 25, 2008, I suspect that Mr. Eardley
22 filed the Amended Notice of Removal and related papers before the Central District filed its
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1 Order remanding the case to this Court at about 4 p.m. on February 26, 2008. If this is the case,
2 then this Court would retain sole jurisdiction over these proceedings.

3 Executed on March 5, 2008 at Los Angeles, California.

4 I declare under penalty of perjury of the laws of the State of California that the foregoing
5 is true and correct.

6 
7 JEFFREY D. WEXLER
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EXHIBIT A



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LA County Superior Court Case No.: BP108870

JS-6

CIVIL MINUTES - GENERAL
CORRECTEDCase No. CV 08-1021 PSG (RCx) Date Feb. 26, 2008Title In re the Conservatorship of the Person and Estate of Britney Jean SpearsPresent: The Honorable Philip S. Gutierrez, United States District Judge

<u>Wendy K. Hernandez</u>	<u>Not Present</u>	<u>n/a</u>
<u>Deputy Clerk</u>	<u>Court Reporter</u>	<u>Tape No.</u>

Attorneys Present for Plaintiff(s):
Not PresentAttorneys Present for Defendant(s):
Not PresentProceedings: **(In Chambers) Corrected Order on the Conservator's Motion to Remand**

Before this Court is the Conservator's Motion to Remand. The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local R. 7-15.

I. BACKGROUND

On February 14, 2008, attorney Jon J. Eardley ("Mr. Eardley") filed a notice of removal for the conservatorship proceedings of Britney Jean Spears ("Ms. Spears") from Los Angeles Superior Court ("Probate Court") to this federal district court. Mr. Eardley claims authority to act on behalf of Ms. Spears despite the Probate Court's orders to the contrary. On February 1, 2008, the Probate Court appointed Samuel D. Ingham III ("Mr. Ingham") as Ms. Spear's attorney. Also on that date, the Probate Court appointed Mr. Spears (Ms. Spears' father) as temporary conservator of Ms. Spears' person and estate. On February 4, 2008, the Probate Court extended the conservatorship over Ms. Spears until February 14, 2008 making the explicit finding that "Ms. Spears does not have the capacity to retain counsel." Then on February 14, 2008, the Probate Court again extended the conservatorship until March 10, 2008. At no time during the conservatorship did the Probate Court find that Ms. Spears had the capacity to retain counsel.

On February 19, 2008, this Court issued an Order to Show Cause to the removing party ordering the party to explain why this action should not be remanded due to the Court's lack of subject matter jurisdiction. Also on that date, Mr. Spears filed the current motion, in which Mr. Ingham joined, to remand the case to the Probate Court. Mr. Spears also requested an award of attorney's fees and sanctions against the removing attorney.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL
CORRECTED

Case No. CV 08-1021 PSG (RCx) Date Feb. 26, 2008
 Title In re the Conservatorship of the Person and Estate of Britney Jean Spears

For the following reasons, this Court grants Mr. Spear's motion to remand. Also, the Court declines to award attorney's fees.

II. LEGAL STANDARD

While 28 U.S.C. § 1441 provides that some actions filed in state court may be removed to federal district court, “[t]he removal statute is strictly construed against removal jurisdiction, and the burden of establishing federal jurisdiction falls to the party invoking the statute.” *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004), *amended*, 387 F.3d 966 (9th Cir. 2004), *cert. denied*, 544 U.S. 974 (2005) (citation omitted). The Ninth Circuit applies a “strong presumption” against removal jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citation omitted). Furthermore, “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Id.* (citation omitted).

III. DISCUSSION

A. Mr. Eardley's Standing to Remove the State Court Case

The conservator and Ms. Spears' court-appointed attorney make a simple argument for remand: Mr. Eardley is not Ms. Spears' attorney and acted improperly by removing her conservatorship proceeding to federal court. While Mr. Eardley argues that this Court has subject matter jurisdiction over the case because Ms. Spears' due process rights were violated in the conservatorship proceeding, Mr. Eardley fails to explain why he can bring this claim for her in the first instance. He cannot.

The federal removal statute clearly allows only a defendant to remove a case to federal court. Section 1441(a) states that, under the proper circumstances, “any civil action brought in a State court ... may be removed by the defendant or the defendants.” 28 U.S.C. § 1441(a). Several courts have considered the issue and have been uniform in determining that non-parties do not have a right to remove cases to federal court. *See, e.g., Newman and Cahn, LLP v. Sharp*, 388 F. Supp. 2d 115, 117 (E.D.N.Y. 2005) (Both a non-party and an individual claiming to be a real party in interest have “no authority to seek removal.”); *Geiger v. Arcticco Enterprises, Inc.*, 910 F. Supp. 130, 131 (S.D.N.Y. 1996) (“It is clear beyond peradventure of a doubt that the right of removal is vested exclusively in defendants.”); *Kane v. Republica De Cuba*, 211 F. Supp. 855, 856-58 (D.P.R. 1962) (a non-party who has not formally intervened may not remove a case from state court).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL
****CORRECTED****

Case No. CV 08-1021 PSG (RCx) Date Feb. 26, 2008

Title In re the Conservatorship of the Person and Estate of Britney Jean Spears

Here, Mr. Eardley had no authority to remove the case from state court. He is neither a defendant nor a party. While he claims to be Ms. Spears' attorney, the Probate Court appointed Mr. Ingham as her attorney and found that she was incapable of retaining her own counsel. Mr. Eardley did not challenge the Probate Court's appointment of Mr. Ingham and has not attempted to intervene in the conservatorship proceeding on her behalf. Instead, Mr. Eardley caused the case to be removed to federal court while clearly lacking the authority to do so.

B. Attorney's Fees Award

The Court finds that it is inappropriate to award attorney's fees in this case.

IV. CONCLUSION

For the foregoing reasons, the Court REMANDS this case to the Probate Court.

Wexler, Jeffrey

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Wednesday, March 05, 2008 11:12 AM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:08-cv-01021-PSG-RC Conservatorship of Britney Jean Spears v. Britney J Spears Notice (Other)

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended. Direct all inquiries to ecf-helpdesk@cacd.uscourts.gov.

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 3/5/2008 at 11:11 AM PST and filed on 2/26/2008

Case Name: Conservatorship of Britney Jean Spears v. Britney J Spears

Case Number: 2:08-cv-1021

Filer: Britney J Spears

WARNING: CASE CLOSED on 02/26/2008

Document Number: 36

Docket Text:

NOTICE AMENDED NOTICE OF REMOVAL OF ACTION filed by DEFENDANT Britney J Spears.
(lra)

2:08-cv-1021 Notice has been electronically mailed to:

Jon J Eardley jjeardley@aol.com

Jeffrey D Wexler jwexler@luce.com

2:08-cv-1021 Notice has been delivered by First Class U. S. Mail or by fax to: :

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: C:\Documents and Settings\lrayford\Desktop\G-98[1].pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=3/5/2008] [FileNumber=5467082-0]]

[7620da760f70c59b9f865a1ad50f06348eee41fc67dce24c58cfaecbaf2ab0694bf19
9ecdb951c1b1dd52c135ebfe27b1e3ee484cfe5e95badf7d2ed8034364c]]

Wexler, Jeffrey

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Wednesday, March 05, 2008 11:19 AM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:08-cv-01021-PSG-RC Conservatorship of Britney Jean Spears v. Britney J Spears Application to Seal

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*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 3/5/2008 at 11:19 AM PST and filed on 2/26/2008

Case Name: Conservatorship of Britney Jean Spears v. Britney J Spears

Case Number: 2:08-cv-1021

Filer: Britney J Spears

WARNING: CASE CLOSED on 02/26/2008

Document Number: 37

Docket Text:

APPLICATION to Seal Notice Of Removal and Declarations of Declarants B and C [36] filed by DEFENDANT Britney J Spears. (lra)

2:08-cv-1021 Notice has been electronically mailed to:

Jon J Eardley jjeardley@aol.com

Jeffrey D Wexler jwexler@luce.com

2:08-cv-1021 Notice has been delivered by First Class U. S. Mail or by fax to: :

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: C:\Documents and Settings\lrayford\Desktop\G-98[1].pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=3/5/2008] [FileNumber=5467203-0]
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52c00d5c0cd0513b6db96e1616602ad5feef40f7e4dbf253eea59ebc0a0]]

3/5/2008
g.1501

Wexler, Jeffrey

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Wednesday, March 05, 2008 11:21 AM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:08-cv-01021-PSG-RC Conservatorship of Britney Jean Spears v. Britney J Spears Declaration (non-motion)

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 3/5/2008 at 11:20 AM PST and filed on 2/26/2008

Case Name: Conservatorship of Britney Jean Spears v. Britney J Spears

Case Number: 2:08-cv-1021

Filer: Britney J Spears

WARNING: CASE CLOSED on 02/26/2008

Document Number: 38

Docket Text:

DECLARATION of JON EARDLEY filed by Defendant Britney J Spears. (lra)

2:08-cv-1021 Notice has been electronically mailed to:

Jon J Eardley jjjeardley@aol.com

Jeffrey D Wexler jwexler@luce.com

2:08-cv-1021 Notice has been delivered by First Class U. S. Mail or by fax to: :

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: C:\Documents and Settings\lrayford\Desktop\G-98[1].pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=3/5/2008] [FileNumber=5467211-0]

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3/5/2008

Wexler, Jeffrey

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Wednesday, March 05, 2008 11:22 AM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:08-cv-01021-PSG-RC Conservatorship of Britney Jean Spears v. Britney J Spears Declaration (non-motion)

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 3/5/2008 at 11:21 AM PST and filed on 2/26/2008

Case Name: Conservatorship of Britney Jean Spears v. Britney J Spears

Case Number: 2:08-cv-1021

Filer: Britney J Spears

WARNING: CASE CLOSED on 02/26/2008

Document Number: 39

Docket Text:

DECLARATION of "C" filed by Defendant Britney J Spears. (lra)

2:08-cv-1021 Notice has been electronically mailed to:

Jon J Eardley jjeadley@aol.com

Jeffrey D Wexler jwexler@luce.com

2:08-cv-1021 Notice has been delivered by First Class U. S. Mail or by fax to: :

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: C:\Documents and Settings\lrayford\Desktop\G-98[1].pdf

Electronic document Stamp:

[STAMP_cacdStamp_ID=1020290914 [Date=3/5/2008] [FileNumber=5467244-0]

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60eb356a4fe07a9064c4af321ade9147b50caffa564cc4bcd936540d9c0]]

3/5/2008

Wexler, Jeffrey

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Wednesday, March 05, 2008 11:23 AM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:08-cv-01021-PSG-RC Conservatorship of Britney Jean Spears v. Britney J Spears Declaration (non-motion)

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 3/5/2008 at 11:22 AM PST and filed on 2/26/2008

Case Name: Conservatorship of Britney Jean Spears v. Britney J Spears

Case Number: 2:08-cv-1021

Filer: Britney J Spears

WARNING: CASE CLOSED on 02/26/2008

Document Number: 40

Docket Text:

DECLARATION of "B" filed by Defendant Britney J Spears. (lra)

2:08-cv-1021 Notice has been electronically mailed to:

Jon J Eardley jjeadley@aol.com

Jeffrey D Wexler jwexler@luce.com

2:08-cv-1021 Notice has been delivered by First Class U. S. Mail or by fax to: :

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: C:\Documents and Settings\lrayford\Desktop\G-98[1].pdf

Electronic document Stamp:

[STAMP_cacdStamp_ID=1020290914 [Date=3/5/2008] [FileNumber=5467258-0]
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f6e3820acbc44b98b376d5640d705bf226b17e75f10c84632557c3ae02c]]

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CENTRAL DISTRICT OF CALIFORNIA**

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1 Jon Eardley, Esq. CA Bar No. 132577
2 **LAW OFFICES OF JON EARDLEY**
3 50 Jericho Turnpike
4 Suite 201
5 Jericho, New York 11753
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7 | 1707 N Street, N.W.
8 | Washington, D.C. 20036
9 | 202-223-4884

10 Attorney for Britney J. Spears

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF
CALIFORNIA – LOS ANGELES DIVISION

13 CONSERVATORSHIP OF BRITNEY) CASE NO. CV 08-1021 PSC (RCx)
14 JEAN SPEARS)
15) **OPPOSITION TO MOTION TO**
16) **REMAND; DECLARATION OF**
17) **JON EARDLEY**
18)
19) **Date: March 17, 2008**
20) **Time: 1:30 p.m.**
21) **Place: Courtroom 790**
22) **Roybal Building**
23)

OPPOSITION TO MOTION TO REMAND

INTRODUCTION

The conservator argues that the case should be remanded to the state court; however, other than unilateral statements from court appointed officials, there is nothing in the record of the proceedings that it was impossible to provide Britney with a hearing and notice of a hearing that would have afforded her basic constitutional due process and the right to be heard as to the appropriateness of her father James Spears being appointed co-conservator. Mr. Spears has now moved into her house and has taken control of her financial assets, as well as her physical custody, all without the benefit of a hearing where Ms. Spears would be present. Additionally, she has been denied her fundamental rights to associate freely and to utilize telephones and other methods of communication with the outside world. The conservatorship has taken away significant liberties from the individual. She has been in a form of private confinement for nearly a month. Certainly, at this point, it is likely that circumstances have changed and it is time that the conservatee be brought into court for a hearing, where the court can evaluate her in person and hear testimony directly from her.

Additionally, Ms. Spears should be allowed to retain her own medical professionals to evaluate her condition. The conservatorship is palpably biased with respect to the conservatee. There are financial issues which involve the possible misappropriation of assets. These issues will not be discussed herein because counsel has not had the time to obtain declarations and other evidence in support of

OPPOSITION TO MOTION TO REMAND

1 this fact. Further, counsel is informed and believes from his investigation, that Ms.
2 Spears has never been and is not now on comfortable terms with her live-in father
3 conservator. In fact counsel has learned that there has been significant verbal attacks
4 by her live-in father conservator and is concerned for the emotional and physical
5 safety of Britney, under these circumstances.

6
7 Having relied on the courts previous OSC of February 29, 2008 for the filing of
8 additional papers, I have not been able to brief all of the issues in this matter as a
9 result of the court's shortened briefing schedule issued yesterday but have addressed
10 the ones that are the most important for this court's review. Counsel cannot over
11 stress his concern for the emotional and physical safety of his client.
12
13

14 As a result of this court's granting of shortened notice on February 21, 2008,
15 counsel will submit on Monday, February 25, 2008 an application for leave to amend
16 the notice of removal to include federal claims involving witness intimidation, victim
17 intimidation, and other federal claims appropriate for this court's review.
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28 OPPOSITION TO MOTION TO REMAND

MEMORANDUM OF POINTS AND AUTHORITIES

1. FEDERAL JURISDICTION IS PROPER BECAUSE MS. SPEARS HAS BEEN DENIED HER FUNDAMENTAL RIGHT TO A TRIAL BY JURY AS REQUIRED UNDER THE LPS ACT.

Both federal and state courts have held that conservatorship proceedings must comply with fundamental notions of due process. Conservatorship of Roulet (1979) 23 Cal 3d 219, 152 Cal Rptr 425, 590 P2d 1, 1979 Cal LEXIS 195. As explained long ago by the California Supreme Court, the state must provide "proof beyond a reasonable doubt of the conservatee's grave mental disability was required under the due process clause of the California Constitution. " Id. The mere fact that the conservatee was confined in a hospital rather than a prison did not eliminate the need to protect her against false confinement. Id. Because a conservatorship under the grave disability provisions of the LPS Act threatens a massive curtailment of the conservatee's liberty and personal autonomy, strict compliance with the statutory procedures designed to protect the conservatee is required [Edward W. v. Lamkins (2002) 99 Cal. App. 4th 516, 531, 533-534, 122 Cal. Rptr. 2d 1] . Because of the deprivation of liberty and stigma attached to involuntary commitment to a mental institution, due process requires that grave disability be established by proof beyond a reasonable doubt and, if a jury trial has been requested, by a unanimous verdict [Conservatorship of Hofferber (1980) 28 Cal. 3d 161, 178-179, 167 Cal. Rptr. 854,

OPPOSITION TO MOTION TO REMAND

1 616 P.2d 836 ; Conservatorship of Margaret L. (2001) 89 Cal. App. 4th 675, 679,
2 107 Cal. Rptr. 2d 542].

3
4 Britney was not afforded any of these rights in the state court.

5
6 2. THE LITIGATION STRATEGY EMPLOYED BY THE
7 CONSERVATORSHIP IS A SCHEME DESIGNED TO DENY BRITNEY
8 HER RIGHTS UNDER FEDERAL LAW.

9
10 A. In The Interests Of Justice, And As A Matter Of Federal Statutory And
11 Constitutional Law, This Matter Must Remain In The Federal Courts.

12
13 Defendants' Notice of Removal provides adequate notice for removal based upon
14 federal subject matter jurisdiction, consistent with the United States Supreme Court's
15 recent decision in Grable & Sons Metal Products v. Darue Engineering and Mfg.,
16 545 U.S. 308 (2005).

17
18 Additionally, adequate notice of issues involving federal questions was provided
19 in the notices of removal in both cases in that defendants have demonstrated
20 violations of the rule of Tulsa Professional Collection Services, Inc. v. Pope, 485
21 U.S. 478 (1988) in the conservatorship proceedings. The temporary conservatorship
22 was granted in violation of the five day notice requirement under state law ostensibly
23 because notice to Britney would have also been notice to Sam Lufti. Thus, the
24 perjured declaration of Lynn Spears was submitted to the state court, not only to
25 deny Britney her freedom of association with her best friend, but also to justify
26 OPPOSITION TO MOTION TO REMAND

1 denying Britney a hearing and even minimal notice of a hearing. The court should
2 take a close look at the declaration of Lynn Spears because on its face it is
3 inconsistent concerning the events it allegedly describes and does not constitute
4 credible evidence to justify a waiver of notice pursuant to Tulsa, *supra*.

5 It is obvious that the conservatorship was planned well in advance of its
6 implementation as a tool to influence the custody proceedings in the family law court
7 and for other illicit purposes. A probate action, wherein as here, the prospective
8 conservatee would suffer the adjudication of fundamental constitutional rights,
9 requires notice and the opportunity for participation consistent with Tulsa
10 Professional Collection Services, Inc. v. Pope, 485 U.S. 478 (1988).

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15 3. REMOVAL IS PROPER BECAUSE OF FEDERAL QUESTION
16 JURISDICTION.

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19 A. Significant Federal Issues Exist In The Conservatorship Matter To
20 Justify Federal Question Jurisdiction.

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23 The case removed to federal court implicates sufficient federal question
24 jurisdiction to warrant removal under 28 U.S.C. §1441(a). "The statute that governs
25 removal jurisdiction in this case, [28 U.S.C. § 1441(a)], allows removal of 'any civil
26 action' over which the district court has original jurisdiction. [The 9th Circuit] has
27 OPPOSITION TO MOTION TO REMAND

1 held that the presence of at least some claims over which the district court has
2 original jurisdiction is sufficient to allow removal of an entire case, even if others of
3 the claims alleged are beyond the district court's power to decide. Kruse v. State of
4 Hawaii, 68 F.3d 331, 334-35 (9th Cir.1995)." Lee v. American Nat. Ins. Co., 260
5 F.3d 997, 1004 (9th Cir. 2001).

6 As the 9th Circuit has explained, the presence of federal question jurisdiction
7 renders a case properly removable to federal court even if some state-law claims are
8 otherwise not considered removable:

9 " *Kruse* thus recognized as a general matter that federal jurisdiction over a
10 removed case is 'otherwise proper' so long as *some* claims alleged were within
11 the district court's power to decide, even if the district court cannot decide *all* the
12 claims before it. Our circuit's reading of § 1441(a) is consistent with that
13 enunciated two years later by the Supreme Court. In City of Chicago v.
14 International College of Surgeons, 522 U.S. 156, 118 S.Ct. 523, 139 L.Ed.2d 525
15 (1997), the city defendant removed to federal court a plaintiff's lawsuit
16 comprising some federal question claims and some state-law claims reviewing
17 state administrative action. The Court explained that the federal claims within the
18 plaintiff's case suffice[d] to make the actions 'civil actions' within the 'original
19 jurisdiction' of the district courts for purposes of removal. § 1441(a). [The]
20 federal claims, 'if brought alone, would be removable to federal court.' [Citation
21 omitted.] Nothing in the jurisdictional statutes suggests that the presence of
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OPPOSITION TO MOTION TO REMAND

1 related state law claims somehow alters the fact that [the plaintiff's] complaints,
2 by virtue of their federal claims, were 'civil actions' within the federal courts'
3 'original jurisdiction.' [citation omitted] Stated otherwise, the presence of some
4 federal question claims in the plaintiff's case made the case one over which the
5 district court would have original jurisdiction, a proposition that federal court
6 litigators would find wholly unremarkable."

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9 Lee v. American Nat. Ins. Co., 260 F.3d 997, 1004 (9th Cir. 2001).

10 In the instant case, her rights have been significantly violated because without
11 the right to notice and a hearing, many, if not all, of Britney's other rights under the
12 constitution have been deprived, including the right to freedom of association under
13 the First Amendment; the right to due process under the Fifth Amendment; the right
14 to counsel of her own choosing and the right to meet with counsel in private under
15 the Sixth Amendment; the right to a jury trial under the Seventh Amendment; and
16 the right to a fair trial where she is afforded equal protection of the law under the
17 Fourteenth Amendment. Such a significant deprivation of rights cannot be cavalierly
18 disregarded in the name of obtaining an extraordinarily restrictive conservatorship.
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23 B. Contained Within The State Conservatorship Action Are Significant
24 Federal Constitutional And Statutory Rights.
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28 OPPOSITION TO MOTION TO REMAND

1 "There is, however, another longstanding, if less frequently encountered, variety
2 of federal 'arising under' jurisdiction, [the United States Supreme Court] having
3 recognized for nearly 100 years that in certain cases federal question jurisdiction will
4 lie over state-law claims that implicate significant federal issues. *E.g.*, Hopkins v.
5 Walker, 244 U.S. 486, 490-491, 37 S.Ct. 711, 61 L.Ed. 1270 (1917). The doctrine
6 captures the commonsense notion that a federal court ought to be able to hear claims
7 recognized under state law that nonetheless turn on substantial questions of federal
8 law, and thus justify resort to the experience, solicitude, and hope of uniformity that
9 a federal forum offers on federal issues, see ALI, Study of the Division of
10 Jurisdiction Between State and Federal Courts 164-166 (1968)." Grable & Sons
11 Metal Products, Inc. v. Darue Engineering & Mfg., 545 U.S. 308 (2005).

12 The conservatorship litigation removed to this court implicates substantial 14th
13 amendment questions suitable for resolution by a federal court. Denying notice to
14 those parties in interest in the conservatorship case violates the rule of Tulsa
15 Professional Collection Services, Inc., v. Pope, 485 U.S. 478 (1988). In Tulsa, the
16 court held that, "[I]n failing to require more than publication notice, the nonclaim
17 statute violated due process. That contention was based upon Mullane v. Central
18 Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, which held
19 that state action that adversely affects property interests must be accompanied by
20 such notice as is reasonable under the particular circumstances, balancing the State's
21 interest and the due process interests of individuals, and Mennonite Board of
22 OPPOSITION TO MOTION TO REMAND

1 Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180, which generally
2 requires actual notice to an affected party whose name and address are “reasonably
3 ascertainable.”

5 Here, Britney's interest in being provided notice and a hearing were undermined
6 by the unilateral determination that the giving of such notice would somehow enable
7 a first friend to speak with her or advise her concerning the possibility of
8 confinement in a conservatorship. The conservator does not argue that that her name
9 and address were not reasonably ascertainable.
10

CONCLUSION

14 For the foregoing reasons, the motion to remand should be denied; or in the
15 alternative, remanded to state court with special instructions that a hearing be held
16 with the presence of Ms. Spears at the earliest available date. Further, she should be
17 afforded the opportunity to meet with counsel in private; and that adequate measures
18 are taken to secure her right to privacy from undue publicity.
19

22 Date: February 22, 2008 By: _____

Attorney for Britney J. Spears

OPPOSITION TO MOTION TO REMAND

DECLARATION OF JON EARDLEY

I, Jon Eardley, do state and declare as follows.

1. I am counsel for Britney J. Spears.

2. I was retained by her on or about February 12, 2008.

3. I have spoken with her on several occasions. The last time she attempted to call me, the telephone was taken away from her, and the number was disconnected the next day.

4. In the brief period of time I have worked on this case, I have interviewed a number of witnesses in California and abroad. I have not had sufficient time to make a full inquiry as to all relevant matters and have been denied by opposing counsel the opportunity to meet with my client.

5. I am concerned with the information I have learned because I have been informed of the existence of voice mails, etc., that include verbal abuse of the conservatee, Ms. Spears by her father.

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 22nd day of February 2008 in Whittier California.

Tom Gondree

OPPOSITION TO MOTION TO REMAND

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. I am a citizen of the United States. My business address is 16020 Puesta Del Sol, Whittier, CA.

On February 22, 2008 I served the foregoing document, described as
**OPPOSITION TO MOTION TO REMAND; DECLARATION
OF JON EARDLEY**

on the interested parties in this action by placing a true copy thereof in the United States' mail and addressed to:

LUCE FORWARD HAMILTON SCRIPPS
601 S. Figueroa St., Suite 3900
Los Angeles, CA 90017

MAIL AND FAX. I am readily familiar with the firm's practice of collection and sending of correspondence. Pursuant to this practice of collection and processing correspondence, it is mailed on date of this service.

Executed this 22ND day of February, 2008 in Whittier, CA 90603. I declare under penalty of perjury that the foregoing is true and correct.


Jon Eardley